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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 KEITH BERRY,

11 Petitioner,

12 v.

13 DEPARTMENT OF CORRECTIONS,

14 Respondent.

CASE NO. C11-1852 MJP

ORDER ON OBJECTIONS TO  
REPORT & RECOMMENDATION

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16 The Court, having received and reviewed:

17 1. Report and Recommendation (Dkt. No. 6)

18 2. Objections to Report and Recommendation (Dkt. No. 7)

19 and all attached declarations and exhibits, makes the following ruling:

20 IT IS ORDERED that Petitioner's habeas petition is DISMISSED without prejudice.

21 IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability  
22 on the basis of this denial.


23 A state prisoner is required to exhaust all available state court remedies before seeking a  
24 federal writ of habeas corpus. 28 U.S.C. § 2254(b)(1). Petitioner acknowledges that he has not

1 exhausted all available state court remedies. Dkt. No. 1-1, Petition, p. 3. His objections to the  
2 Report and Recommendation merely reiterate the grounds on which he believes he is entitled to  
3 relief; he offers no argument or evidence which might excuse his failure to properly exhaust.  
4 This Court cannot offer Petitioner the relief he seeks on that basis.

5         Petitioner may only appeal this denial of his § 2254 petition if he obtains a certificate of  
6 appealability. A certificate of appealability may issue only where a petitioner has made “a  
7 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). Satisfying  
8 this standard requires Petitioner to “demonstrat[e] that jurists of reason could disagree with the  
9 district court’s resolution of his constitutional claims or that jurists could conclude the issues  
10 presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537  
11 U.S. 322, 327 (2003). Pursuant to this standard, Petitioner is not entitled to a certificate of  
12 appealability, and this order will so reflect.

13         The Clerk of the Court is directed to provide a copy of this order to Petitioner and to the  
14 Magistrate Judge.

15         Dated: December 22, 2011.

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19 Marsha J. Pechman  
United States District Judge